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FREY'S EX'RS *v.* TILLET.

Sept. 17, 1919.

[100 S. E. 457.]

1. **Assignments for Benefit of Creditors (§ 323*)—Right of Creditor of Second Class on Relinquishment by Creditor of First Class.**—If property conveyed to a creditor of the first class by the debtor's trustee for creditors was in good faith applied to debts of the first class, the estate of a creditor of the second class has no right to complain, though after the application was made the creditor of the first class relinquished part or all of his interest to the debtor's wife.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 812.]

2. **Assignments for Benefit of Creditors (§ 161*)—Necessity Clearly to Charge and Prove Fraud.**—Though the evidence may point strongly to fraud, unless the fraud complained of is clearly charged in the pleadings and clearly established by proof, it cannot be made the basis of a decree for relief.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 828.]

3. **Executors and Administrators (§ 437 (1*))—Laches in Suit by Executors of Creditor against Guardian of Debtor's Children.**—Executors of preferred creditor of the second class, of a debtor who assigned to a trustee for creditor, held barred by their own laches and the laches of their decedent from collecting from funds in the hands of the guardian of the children of the debtor the balance due on the debt.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 720.]

Appeal from Corporation Court of Roanoke.

Suit by Frey's executors against one Tillett, as guardian. From a decree dismissing the bill, complainants appeal. Affirmed.

Jas. D. Johnston and *Johnston & Izard*, all of Roanoke, for appellants.

Dillard & Dillard, of Bluefield, W. Va., for appellee.

COVER *v.* WIDENER et al.

Sept. 17, 1919.

[100 S. E. 459.]

Habeas Corpus (§ 99 (4*))—Grandmother Entitled to Custody of Child as against Father.—Maternal grandmother of 13 year old girl held, in habeas corpus proceedings, entitled to her custody as against her father, awarded access merely, who had deserted his wife, the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

child's mother, during the child's infancy, and never thereafter supported them, but had left such obligation to be met by the grandmother; his intention being to place the girl with his sister.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 636; 7 Va.-W. Va. Enc. Dig. 14.]

Error to Circuit Court, Washington County.

Habeas corpus by Edward L. Cover against Mrs. Davis Widener and others. To review an order dividing the custody of the child involved between the respective parties, Cover brings error. Order affirmed.

Qglesby & Burks, of Roanoke, for plaintiff in error.

L. P. Summers, of Abingdon, for defendants in error.

DAVIS et al. v. BOSTIC et al.

Sept. 17, 1919.

[100 S. E. 463.]

Ejectment (§ 13*)—Equitable Title Insufficient to Maintain Action.

—In ejectment to recover the coal under certain land, it appearing that plaintiffs claimed under a deed given when common grantors had no title, that eight years after such deed such grantors acquired legal title and thereupon conveyed to defendants' grantor by general warranty deed, reciting, after description of the land in question, "on this survey a coal bank, timber room and some privileges was sold to" plaintiffs, but no title paper was introduced effecting a severance of the surface from the underlying coal or investing plaintiffs with legal title thereto, plaintiffs could not recover; for plaintiffs' title must be a legal title.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 878.]

Error to Circuit Court, Russell County.

Ejectment by Davis and others against Bostic and others. To review judgment for defendant, plaintiffs bring error. Affirmed.

Finney & Wilson, of Lebanon, for plaintiffs in error.

W. W. Bird, of Lebanon, and *A. G. Lively* and *A. T. Griffith*, both of Honaker, for defendants in error.

BLANCHARD v. DOMINION NAT. BANK.

Sept. 17, 1919.

[100 S. E. 463.]

1. **Equity (§ 207*)—Effect of General Replication.**—General rep-

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